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Attracting highly qualified and qualified third-country nationals

Focussed Study of the German National Contact Point for the
European Migration Network (EMN)

Working Paper 53

Matthias M. Mayer



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Federal Office for Migration and Refugees 2013

Abstract

This study concisely describes the national strategy and measures for attracting highly qualified and qualified third-country nationals. It also provides a statistical overview on the immigration of highly qualified and qualified third-country nationals while addressing challenges and obstacles.

- Germany's residence law offers skilled workers from third countries broad employment options and is relatively liberal compared to other industrial nations. Subsidiary measures, such as information platforms, complement statutory regulations.
- The immigration of skilled foreigners to Germany increased in recent years and in the year 2012 was at around 27,000 third-country nationals. However, a direct causal relationship between this increase and political measures cannot be established.
- Highly qualified third-country nationals do not immigrate exclusively to obtain the residence titles intended for them (Sections 19 and 20 German Residence Act as well as, since 1 August 2012, Section 19a German Residence Act – EU Blue Card): A significant portion instead obtain a residence permit for qualified employment under Section 18, Subs. 4 German Residence Act.
- In 2012, the Federal Employment Agency issued 25,921 approvals for qualified employment under Section 18, Subs. 4 German Residence Act. Estimates show that of those, between 53 % and 87 % were issued to highly qualified third-country nationals. Then there is the not insignificant portion of highly qualified persons who entered without requiring approval from the Federal Employment Agency (BA) under Section 18, Subs. 4 German Residence Act and who thus do not appear in the BA approval statistics.
- The immigration rules for skilled workers continue to be considered by German companies (especially small- and medium-sized businesses) and even by some qualified persons as somewhat complicated, even though the OECD finds that Germany by now belongs to the countries with the lowest hurdles for the immigration of highly skilled workers. However, the OECD recommends to supplement the current possibilities of immigration that do not require an university degree, for instance, also with a greater consideration of specific human capital criteria.

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1 National Strategy and Measures for Attracting Highly Qualified and Qualified Third-Country Nationals

1.1 National Strategy for Attracting Highly Qualified and Qualified Third-Country Nationals

The German Federal Government has defined five paths for securing a future base of skilled workers: (1) activation and securing employment; (2) greater compatibility between family and work; (3) training opportunities for all from the start; (4) qualification: training and development; and (5) integration and qualified immigration (BA 2011c; BMAS 2011; BMAS 2013a). Qualified immigration, together with integrating persons with migration backgrounds, thus supplements four of the action paths in regard to domestic workforce potential.

Definition of highly qualified and qualified third-country nationals

In general, the German Federal Government defines highly qualified third-country nationals¹ as graduates, i.e. persons with a (recognised) university degree, and qualified third-country nationals as skilled labourers, i.e. persons with (recognised) professional training (BMAS/BMI 2013; Bundesregierung 2013). This study uses this definition unless otherwise noted. Beyond

this, however, are additional definition approaches that are used in Germany depending on the situation. These are explained below.

When defining highly qualified and qualified third-country nationals, there are two types of classification in Germany: the definition according to German Residence Law, which forms the basis for issuing residence titles and, if necessary, approvals in the event of a labour market test² by the Federal Employment Agency (BA);³ and the definition according to occupational relevance (i.e. the knowledge and skills required for a profession and the work performed) and level of performance (i.e. complexity of work to be performed) that are applied when placing workers from third countries (cf. BA 2011b: 26, 57).

Since 1 August 2012, Section 19a German Residence Act⁴ – the EU Blue Card – has been at first authoritative for defining highly qualified third-country nationals: those with a university degree (a degree from a German university, a recognised degree from a foreign

1 The EMN glossary defines third-country nationals as persons who are not citizens of the European Union within the meaning of Article 17, Subs. 1 of the Treaty on the Functioning of the European Union and who are not persons enjoying the Union right to freedom of movement as defined in Article 2, Subs. 5 of the Schengen Borders Code (EMN 2012). This means, under this definition, nationals from Norway, Iceland, Liechtenstein and Switzerland are not third-country nationals.

2 In certain occupations regulated by the Employment Regulations and Employment Procedure Regulations, a residence permit for employment may only be issued to a third-country national if no German, EU citizen or third-country national with permanent residence title is available for an existing position. This prerequisite is checked by the labour market test.

3 Meeting the criteria below used for defining highly qualified and qualified third-country nationals is a necessary, but insufficient condition for obtaining residence titles. Additional conditions must be met, such as a firm offer of employment and the necessary qualifications.

4 Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory (German Residence Act – AufenthG).

university or a degree from a foreign university that is comparable to a German degree) drawing an annual income that corresponds to at least two-thirds of the annual income threshold for the general pension insurance (46,400 euro in 2013) are deemed highly qualified. In professions for which there exists a special demand of skilled workers (a.k.a. shortage occupations) – currently natural scientists, mathematicians, engineers, physicians and IT technicians – the minimum annual income is 52 % of the annual income threshold for general pension insurance (36,192 euro in 2013).⁵ Beyond the provisions of the EU Blue Card, Section 19, Subs. 2 German Residence Act specifies persons, who are to be regarded as highly qualified third-country nationals. In particular, these are scientists with special technical expertise or prominent instructors and research associates.⁶ There is no income threshold for these occupations.

Section 18, Subs. 4, Sentence 1 in conjunction with Section 25, Subs. 2 Employment Regulations (BeschV)⁷ defines qualified third-country nationals as those with qualifying professional training of at least two years.

The “Classification of Occupations 2010” (KldB 2010) of the BA can be used as a second system of definition for highly qualified and qualified third-country nationals. Here Germany’s professional landscape is categorised by occupational relevance and level of performance. Based on the level of performance required by the occupation, the qualification level can be determined that a third-country national must fulfil at minimum in order to perform said occupation. The level of performance is divided into four degrees of complexity:

- Level 1:
Assisting and apprenticeship tasks
- Level 2:
Specialised tasks
- Level 3:
Complex specialised tasks
- Level 4:
Highly complex tasks

There is no unified national definition of activities that must be performed by highly qualified or qualified persons. However, activities for highly qualified third-country nationals best correspond to Levels 4⁸ and 3⁹ of the KldB 2010 (Level 3 in particular is difficult to match generally; matching on a case-by-case basis would be appropriate). This roughly corresponds to Class 1 (legislators, senior officials and private sector managers), 2 (professionals) and 3 (technicians) of the International Standard Classification of Occupations (ISCO-88) (Parusel/Schneider 2010: 16).

Professions that must be performed by qualified persons at minimum best correspond to Level 2¹⁰ of the KldB 2010. This performance level roughly corresponds to ISCO-88 Classes 4 (clerks), 5 (service workers and shop and market sales workers), 6 (skilled agricultural and fishery workers), 7 (craft and related trades workers) and 8 (plant and machine operators and assemblers) (Parusel/Schneider 2010: 16).

5 Furthermore, it can be decreed by statutory instrument that an EU Blue Card may be issued under Section 19a, Subs. 1, Sentence 1, No. 1a German Residence Act in conjunction with Section 19a, Subs. 2, Sentence 1, No. 2 German Residence Act to third-country nationals with qualification comparable to a university degree and five years of professional experience in certain occupational groups. So far this option has not been utilised.

6 Prior to 1 August 2012, Section 19 German Residence Act also defined highly qualified persons as specialists and managers with special professional experience with a gross income of at least the income threshold for general pension insurance (67,200 euro in 2012). The Act to Implement the EU Highly Qualified Directive repealed this passage.

7 Regulation on Authorising New Foreigners to Pursue Employment.

8 Level 4 KldB 2010 usually requires at least four years of university education and/or corresponding professional experience. Some professions can also require a doctorate or postdoctoral lecture qualification (BA 2011b: 28).

9 Level 3 KldB 2010 typically includes occupations in which master or technician training or a comparable vocational school/university degree is required. Comparable would be, e.g., a degree from a technical college or university of co-operative education, a vocational school from the former German Democratic Republic or, if applicable, a Bachelor’s from a university (BA 2011b: 27-28).

10 Level 2 KldB 2010 is typically achieved upon completion of a two- to three-year professional training programme (BA 2011b: 27).

Differentiation between highly qualified and qualified third-country nationals in immigration management

The German Federal Government's strategy for employment immigration focuses on skilled workers, i.e. persons with professional training or comparable secondary education at minimum (BA 2011c: 3). The term "skilled worker" consequently includes both highly qualified and qualified persons. As indicated above, the German Residence Act differentiates between highly qualified skilled workers (Sections 18b, 19, 19a and 20 German Residence Act) and qualified skilled workers (Sections 18, Subs. 4, 18a and 18c German Residence Act). The reasons for the concentration of the German Federal Government to attract skilled workers pertain to labour market policy: there is already a shortage of skilled workers in some professions and regions that is likely to increase in the coming years due to demographic developments. The German Federal Government assumes both highly qualified and qualified third-country nationals must be attracted to fill these gaps and secure the availability of skilled workers in Germany for the future. The goal is to attract these groups for Germany on a permanent basis.

Main characteristics of immigration management for highly qualified and qualified third-country nationals

The German immigration management system is at its heart employer-oriented¹¹, i.e. according to Section 18 Subs. 5 German Residence Act, a firm offer of employment must have been made for immigration to be possible, or, according to Section 20 Subs. 1 No. 1 German Residence Act, a hosting agreement for conducting the research project must have been concluded with a recognised research institution.

With the introduction of the residence title for seeking employment for highly qualified¹² skilled workers (as per Section 18c German Residence Act) on 1 August

2012, a human capital-based element was added to the German immigration management system, i.e. possible residence due to certain human capital criteria being met – but without a firm offer of employment (Strunden/Schubert 2012: 272). These criteria are: having a recognised university degree and a secured means of subsistence. However, the German system of immigration management cannot yet be called a hybrid system, i.e. the combination of human capital-oriented (such as a points system) and employer-oriented immigration management elements, since the pertinent residence title is only limited to a six-month period for seeking employment; it can only be changed into a residence title for employment purposes if, within this period, an employment has been found, that is commensurate to the qualifications.¹³

Other groups relevant to immigration management for highly qualified and qualified third-country nationals

Students from third countries are an important target audience in German immigration policy, as they represent future skilled workers. Over the last few years, immigration requirements have been continuously relaxed for this group, and access to the labour market made easier during studies to the greatest possible extent.¹⁴

Researchers with a residence permit under Section 20 German Residence Act¹⁵ also count as highly qualified third-country nationals because they have the required university degree (Parusel/Schneider 2010: 17).¹⁶

Additionally, third-country nationals meeting the criteria for a residence permit for self-employment under

11 For a detailed explanation of employer-oriented immigration management systems, cf. SVR (2012: 15).

12 Section 18c German Residence Act refers to qualified third-country nationals; however, due to the required university degree, the target group in this paragraph falls in the category of highly qualified according to the definition used in this study.

13 For a detailed explanation of hybrid immigration management systems, cf. Papademetriou/Sumption (2011: 5-7).

14 For a detailed explanation of the immigration options for students from third countries, cf. Mayer et al. (2012: 22-28).

15 Section 20 German Residence Act implements the EU Researchers Directive (Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research).

16 For a comprehensive investigation into the situation for foreign researchers in Germany, cf. Klingert/Block (2013).

Section 21 German Residence Act can be considered highly qualified or qualified third-country nationals. The requirements for issuing the appropriate residence permit are an economic interest or regional need for the independent employment activity, positive economic effects and secured financing for the enterprise. Third-country nationals with a domestic university degree or a residence permit under Sections 18 or 20 German Residence Act may be issued a residence permit for self-employment in deviation of these requirements (Section 21, Subs. 2a, Sentence 1 German Residence Act).¹⁷

Persons employed by an international corporation or group that are involved in a personnel exchange form another group in German immigration policy for skilled workers; they can obtain a residence title valid for up to three years. In terms of the required qualifications, either a university/technical college degree or a comparable qualification is required under Section 31, Sentence 1, No. 1 BeschV. Third-country nationals involved in activity that is absolutely necessary for preparing projects abroad must have qualifications corresponding to German professional training under Section 31, Sentence 1, No. 2.

Additionally, immigration management also considers persons who have completed professional training. Third-country nationals who have completed qualifying professional training in Germany can stay in Germany if they have found a suitable employment. In order to look for a suitable employment, they can be issued a residence title for up to one year. The amendment to the Employment Regulations will create additional immigration options for third-country nationals who have completed professional training (cf. Chapter 1.2).

Short-term measures of immigration management targeting specific occupational groups

Since June 2011, physicians and engineers in certain disciplines (mechanical, automotive and electrical engineering) are exempt from the labour market test under Section 39, Subs. 2, Sentence 1, No. 1 German

Residence Act (a.k.a. positive list procedure) (BA 2011a). The Federal Ministry of Labour and Social Affairs (BMAS) ordered this procedure expanded on 1 February 2012 to include supply and disposal engineers, steel and metal construction engineers and software development/programming experts (BA 2012). However, the equivalence of the working conditions (compared to the conditions for corresponding resident workers) will continue to be reviewed. Experts are persons with at least a four-year university degree or comparable qualification (BAMF/EMN 2013). With the entering into force of the EU Blue Card on 1 August 2012, this regulation has practically no significance any longer, as the EU Blue Card can be issued without conducting a priority check.

Other measures in implementing the EU Highly Qualified Directive

The German Federal Government implemented the EU Highly Qualified Directive¹⁸ as of 1 August 2012. The amendments required by this directive to the German Residence Act go beyond the provisions of the directive introducing the EU Blue Card, especially by the short residence period required for issuing a settlement permit (Section 19a, Subs. 6, German Residence Act) (Strunden/Schubert 2012: 272). In addition, the legislative procedure was used to create a residence permit that allows skilled workers to seek employment (Section 18c German Residence Act), increase the number of days international students can work during studies from 90 to 120 whole or 180 to 240 half days (Section 16, Subs. 3 German Residence Act), and extend the time graduates of German universities from third countries can seek employment from 12 to 18 months (Section 16, Subs. 4 German Residence Act).

Further relaxations allow persons undergoing professional training to work for up to ten hours per week (Section 16, Subs. 5a; Section 17, Subs. 2 German Residence Act) and obtain a residence permit of up to one year after completion in order to seek suitable employment (Section 16, Subs. 5b; Section 17, Subs. 3 German Residence Act).

¹⁷ For a comprehensive investigation into the immigration of self-employed and freelance migrants from third countries, cf. Block/Klingert (2012).

¹⁸ Directive 2009/50/EC on the conditions of entry and stay of third-country nationals for the purposes of highly qualified employment.

Additionally, Section 21, Subs. 2a German Residence Act makes it easier for graduates of German universities and researchers/scientists with a residence permit under Sections 18 or 20 German Residence Act to become self-employed and change the purpose of their residence to self-employment (Section 21 German Residence Act). This requires the intended independent activity be related to the knowledge attracted at university or to the activities performed as a researcher or scientist.¹⁹ Amendments also allow third-country nationals with domestic professional training to take up suitable employment; the labour market test is then not required (Section 27, Subs. 3 German Residence Act).

Brain drain

The Act to Amend the Employment Regulations that will come into effect on 1 July 2013 includes regulations for the prevention of brain drain, i.e. the economic losses to developing or emerging countries caused by the emigration of highly qualified and qualified persons. The amendment to the Employment Regulations allows third-country nationals who have completed a professional qualification of at least two years duration, for the first time, to take up employment. This requires a respective shortage of applicants and that the profession has been included in the list of shortage occupations, i.e. the so-called positive list (Section 6, Subs. 1 No. 2 BeschV), or that the respective persons are placed by the BA on the basis of an agreement with the labour administration of the country of origin. The possibility to restrict immigration in shortage occupations to certain countries of origin, and to take into account the aspect of brain drain when choosing the countries with which agreements are concluded, is supposed to serve the interests of countries of origin, and, e.g. avoid any potential adverse brain drain in that country (BMAS/BMI 2013: 33).

In conjunction with the EU Blue Card, there is also a brain drain exception in Section 19a, Subs. 2, Sentence 1, No. 3 German Residence Act that states that family members from certain states shall not be issued an EU Blue Card due to a shortage of skilled workers in certain occupational groups in the country of origin;

a corresponding statutory instrument outlining these countries has not yet been issued.

Furthermore, brain drain in developing countries is counteracted through various specific programmes and pilot projects for certain countries: The “Returning Experts”²⁰ programme focuses on returnees who are usually qualified for professional career and economic positions and supports these persons with placement, if applicable, financial assistance and consultation (Baraulina et al. 2012: 17).

Another project is the “Pilot Scheme for Promoting the Legal Mobility of Highly Qualified Experts from Tunisia”. This is designed to give young graduates the opportunity to gather professional experience in Germany through continuing education and a work stay that should benefit them when they return.

The “Triple Win Nurses – Sustainably Attracting Nurses” project has the same thrust. Its goal is to permanently harmonise the filling of vacant positions in Germany with the interests of immigrating skilled workers as well as the countries of origin; this should be accomplished by transferring know-how and capital to the country of origin as well as through developmental diaspora management. Partner states will include Serbia and Bosnia-Herzegovina in particular and likely Tunisia and the Philippines. Similar projects being conducted by the GIZ are the “Pilot Project to Train Workers from Vietnam in Nursing” (on behalf of the Federal Ministry of Economics and Technology – BMWi) and the “Pilot Scheme for Legal Mobility of Highly Qualified Experts from Tunisia” (on behalf of the AA).

Circular migration

The German Federal Government seeks to secure a long-term base of skilled workers in Germany (BMAS 2013a: 48); at the foreground for attracting highly qualified and qualified third-country nationals is providing the immigrants with a long-term prospects for remaining in Germany (BAMF 2013b: 3-4). Circular migration is permitted to a certain extent, but gener-

¹⁹ For a detailed explanation of immigration options for self-employment, cf. also Schneider (2012b: 48).

²⁰ The project is conducted by the Centre for International Migration and Development (CIM) <http://www.cimonline.de/en/61.asp> (08/04/2013).

ally not directly promoted (Schneider/Parusel 2011: 9). Under Section 51, Subs. 1, No. 7 German Residence Act, the residence title becomes void if the foreigner leaves the country and does not return within six months (12 months for those who hold an EU Blue Card under Section 51, Subs. 10 German Residence Act) or a longer period specified by the Foreigners Authority. This six-month period is relatively brief and it can be generally assumed that a longer period promotes circulation (Schneider/Parusel 2011: 34).

However, according to Section 51, Subs. 4, Sentence 1 German Residence Act, this period can differ for persons with a firm residence status. The General Administrative Regulations on the German Residence Act (AVwV German Residence Act) cites two specific cases where exceptions can be made to the six-month limit: under 51.4.1.1 AVwV German Residence Act for third-country nationals with a settlement permit who only wish to stay abroad for reasons that are by nature temporary; and under 51.4.1.2 AVwV German Residence Act for foreigners whose stay abroad serves the interest of the Federal Republic (e.g. as development workers, foreign spouses of German diplomats or to promote business or employment relationships abroad that assist development).²¹

Although circular migration is not directly mentioned in the mobility partnerships concluded with the Republic of Moldova, Georgia and Armenia, thanks to improvements to outward mobility, also circular migration has been made easier rudimentarily: For nationals from the Republic of Moldova, Georgia, and Armenia with a legal residence title in Germany, the possibility exists to leave Germany for more than the standard six months without losing said residence title (BAMF/EMN 2013).²²

Under 51.4.1.2 AVwV German Residence Act, the maximum period for a stay abroad without losing the residence title is two years for such cases that are based on international agreements with countries of residence that aid their economic development (and are thus in the interest of the Federal Republic of Germany).

The issuance of residence titles for re-employment in Germany – also after longer stays abroad – has been made easier for certain groups relevant to the immigration of skilled workers, such as graduates of German universities or occupational groups determined in the positive list procedure as well as applicants for an EU Blue Card, thanks to being exempted from the labour market test (Section 27, Subs. 3, Sentence 1 BeschV; cf. also “Short-term measures of immigration management targeting specific occupational groups” section) or waiving the approval requirement by the BA. This also facilitates circular migration.

Public debate

Since the orientation towards actively attracting highly qualified and qualified third-country nationals at the end of the 1990s, the immigration of skilled workers has been the subject of intense public discourse that has equally included government bodies and authorities, parliament, non-governmental organisations, the media and society (BAMF/EMN 2010; BAMF/EMN 2011; BAMF/EMN 2012; BAMF/EMN 2013; Parusel/Schneider 2010; SVR 2011). In particular, the debate was fuelled by events ranging from the introduction of the Green Card on 1 August 2000 and the comprehensive immigration reform to the enactment of the Immigration Act²³ on 1 January 2005. Even afterwards, the need for the immigration of skilled workers to secure the supply of skilled workers in Germany as well as the design of appropriate management instruments and the establishing of a welcoming society were discussed – and legally implemented, e.g., through the Law to Manage Economic Migration (Arbeitsmigrationssteuerungsgesetz) in 2009, the introduction of the EU Blue Card in 2013, and the new BeschV in 2013. The debate thus runs parallel to the continued opening of the German labour market for highly qualified and qualified immigrants. Gauging the impact of the debate on measures for attracting highly qualified and qualified third-country nationals goes beyond the scope of this study.

21 For a detailed discussion, cf. also Baraulina et al. (2012: 20).

22 On mobility partnerships, cf. also Schneider (2012a: 75).

23 Act on Managing and Limiting Immigration and on Regulating the Residence and Integration of EU Citizens and Foreigners (Immigration Act – ZuwandG).

1.2 Measures for Attracting Highly Qualified and Qualified Third-Country Nationals

General legal conditions

Parusel/Schneider (2010: 24-35) give a detailed overview on the general legal conditions for the immigration of highly qualified and qualified third-country nationals. This is supplemented by Schneider (2012b: 55-56) with amendments to immigration law that have since been enacted, specifically the implementation of the EU Highly Qualified Directive (cf. also Chapter 1.1). A precise explanation of the implementation of the EU Highly Qualified Directive can also be found in the EMN Policy Report 2012 (BAMF/EMN 2013). This study focuses on explaining the amendment to the Employment Regulations taking effect on 1 July 2013 which the aforementioned report does not address.

The Employment Regulations are being fundamentally reformed and simplified, with the paradigm shift to actively attracting skilled workers from third countries that was initiated by implementing the EU Highly Qualified Directive in the German Residence Act being transferred to the Employment Regulations. The new regulations open the German labour market for the first time to third-country nationals who have completed a foreign professional qualification of at least two years duration (Section 6 BeschV amended).²⁴ This sets forth two paths for third-country nationals who obtained their professional qualifications abroad: first, through the so-called positive list²⁵ containing the shortage occupations where skilled workers are greatly needed. When determining the shortage occupations, different regional demands of the labour market can be taken into consideration. Within the scope of this regulation, the BA can restrict immigration to certain countries of origin and set fixed quotas. The second path consists of the BA concluding bilateral placement agreements with the labour administrations of countries of origin for individual professions. In addition,

the conditions for domestic third-country nationals previously set forth in the Employment Procedure Regulations (BeschVerfV) will be transferred to the BeschV; the BeschVerfV will be repealed when the new BeschV goes into effect (BMAS 2013b; BMAS/BMI 2013; Bundesregierung 2013).

Specific measures for promoting the attraction of highly qualified and qualified third-country nationals

Legal measures

The labour market test conducted by the BA under Section 39, Subs. 2, Sentence 1, No.1 German Residence Act has been successively suspended in recent years for a growing number of highly qualified and qualified persons; however, the BA continues to review whether filling the position would be a responsible decision from a labour market and integration policy perspective, and whether or not the foreigner would be employed under working conditions unequal to those of comparable German workers. Exempted from the labour market test are graduates of German schools abroad with a recognised degree or a foreign degree comparable to that of a German university (Section 27, Subs. 1, No. 3 BeschV), skilled workers who have completed qualifying professional training in Germany (Section 27, Subs. 1, No. 4 BeschV), executives and specialists (Section 28 BeschV) and skilled workers involved in international personnel exchanges or projects abroad (Section 31 BeschV).

Approval from the BA – i.e. review of whether filling the job would be a responsible decision from a labour market and integration policy perspective and of equal working conditions – is not required under Section 3a, No. 1 respectively No. 2 BeschV for highly qualified persons with the EU Blue Card as long as they receive the minimum income under Section 41a, Subs. 1 BeschV or if they receive the minimum income under Section 41a, Subs. 2 BeschV and have proof of having completed a course of study at a German university (Section 19a German Residence Act).²⁶ Approval from

²⁴ With the exception of nurses, this was previously not possible.

²⁵ The positive list is created by the BMAS and the BA and can be easily adjusted as needed.

²⁶ However, the special regulations for shortage occupations subsumed in the EU Blue Card require approval if the applicant does not have a German university degree. There is no labour market test in this instance (Section 27, Subs. 3 BeschV).

the BA is also not required for highly qualified persons with a settlement permit under Section 19, Subs. 2 German Residence Act, skilled workers with a German university degree (Section 3b BeschV), managers (Section 4 BeschV) and scientists (Section 5 BeschV).

Once the new BeschV takes effect, and in continuation of the current legal situation, third-country nationals with a (recognised) foreign university degree (Section 2 BeschV amended), executives and specialists (Section 4 BeschV amended) can receive approval. Graduates of German schools abroad with a (recognised) foreign university degree or (recognised) foreign professional training (Section 7 BeschV amended) are then exempt from BA approval.

Following an investigation of the procedure for issuing visas to foreign skilled workers, the visa issuing process was condensed through amendments to the regulation as well as renewals brought about by implementing the EU Highly Qualified Directive. Since 5 March 2013, the approval requirement from the Foreigners Authority for the issuance of visas has been largely omitted for work stays, especially if there was no prior stay in the Federal Territory (Section 31, Subs. 1, Sentence 1, No. 3 Aufenthaltsverordnung – AufenthV (Residence Regulations)). For instances that still require BA approval, approval is deemed given under Section 14a, Subs.1 BeschVerfV (or Section 37 BeschV amended) if not actually granted after two weeks (a.k.a. deemed approval). Section 14a, Subs. 2 BeschVerfV (or Section 37 BeschV amended) also offer the option of a general preliminary review. Accordingly, the BA should give approval before the request to take up employment is sent, or review whether or not the labour market requirements for subsequent approval would be met if the employer provides the necessary information.²⁷ Holders of the EU Blue Card have additional benefits: This group may stay abroad without losing their residence title for up to 12 months under Section 51, Subs. 10 German Residence Act in deviation of the typical six-month limit (cf. Chapter 1.1).

Information portals/consultation options

Information portals are intended to positively influence the decision of skilled workers to immigrate to Germany. The “Make it in Germany”²⁸ portal started by the BMWi informs skilled workers and students of the options for immigrating to Germany for work (BMAS 2013a: 52).

In addition, pilot projects conducted by the GIZ help prepare skilled workers consultants for postings in German missions in India, Indonesia and Vietnam (BMAS 2013a: 52). These consultants should be locals, be familiar with Germany and the requirements of the German labour market, and consult skilled workers interested in immigration and, if necessary, assist in making preparations for entry. The organisations’ network structures established on-site (e.g. diplomatic missions, foreign trade chambers, Goethe institutes and political foundations) are utilised in a targeted fashion. In addition to German labour market interests, the situation in the country of origin is also taken into consideration in terms of sustainably attracting skilled workers (cf. also “Brain drain” section in Chapter 1.1).

Another project is “Study and Work – Keeping Foreign Students in East Germany and Sending Welcoming Signals”. This project targets foreign students at East German universities to encourage them to take up employment in the new German federal states. This requires universities to co-operate closely with the regional economy and with regional employment agencies. The background of this project is the fact that the demographic change in East Germany has progressed further than in West Germany, and relatively fewer foreigners move to the eastern half of the German Federal Republic (Beauftragter der Bundesregierung für die Neuen Bundesländer 2013 – Representative of the German Federal Government for the new German Federal States 2013); for example, the immigration figure for foreigners coming to the new federal states in 2011 was 13,463 versus 262,908 to the older federal states (Statistisches Bundesamt 2013: 14 – German Federal Office for Statistics). A similar project by the Bavarian State Government known as “Study and Stay

²⁷ For a discussion on this topic, cf. also Strunden/Schubert (2012: 275) and Copur/Steller (2013: 63).

²⁸ www.make-it-in-germany.com (08/04/2013). The portal is mutually linked to the EU immigration portal, among other sites: www.ec.europa.eu/immigration (08/04/2013).

Bavaria” has the goal of attracting foreign students and graduates of Bavarian universities for the Bavarian economy. This project will continue at various universities until spring 2013.²⁹

Measures specifically targeting researchers

In 2010, the Alexander von Humboldt Foundation, the German Academic Exchange Service (DAAD), the German Research Foundation (DFG), and the Fraunhofer Organisation joined forces to form the “International Research Marketing Network”. The network is part of the advertising initiative of the Federal Ministry of Education and Research (BMBF) for Germany as a research location under the brand “Research in Germany – Land of Ideas”.

The DAAD is in charge of taking the lead in the research network for attracting junior scientists, who are considered highly qualified third-country nationals by the German Federal Government (cf. Chapter 1.1). To this end, it offers targeted informational brochures as well as the “Research in Germany”³⁰ information portal, and organises joint presentations of German universities and research institutes at international career expos as well as global information seminars (e.g. European Career Fair, Boston; Naturejobs Career Expo, London; PhD-Workshop China, Peking).

In the Research Marketing Network, established scientists are primarily the concern of the DFG and Alexander von Humboldt Foundation. Corresponding measures include workshops and information stands at international symposia, indirect talks by alumni, and various targeted information offers.

Preferential treatment for family unification

Skilled workers working in Germany generally have the right to family unification. Family members receive immediately after entry the same access to the job market as the person they are joining. Since August 2007, spouses of third-country nationals generally must demonstrate basic knowledge of German in order to enter for family reunification. This does not apply for spouses of holders of the EU Blue Card (Sec-

tion 30, Subs. 1, Sentence 3, No. 5 German Residence Act), nor for spouses of highly qualified persons, researchers, and self-employed persons (i.e. persons with a residence title under Sections 19–21 German Residence Act), provided the marriage was in existence before the first spouse moved to the Federal Republic (Section 30, Subs. 1, Sentence 2, No. 1 German Residence Act). Furthermore, nationals of states for which a visa is not required for entry even for long stays are exempted from demonstrating basic knowledge of German (Section 30, Subs. 1, Sentence 2, No. 4 German Residence Act).³¹

Spouses of persons with the EU Blue Card as per Section 19a German Residence Act or a residence permit for researchers as per Section 20 German Residence Act receive immediate unrestricted access to the job market; BA approval is not required. Otherwise foreigners are permitted to pursue employment to the extent permitted to their spouses (Section 29, Subs. 5 German Residence Act). Family members of a skilled foreigner as per Sections 3b, 4, 5, 27 and 28 BeschV or Section 31, Sentence 1, No. 1 BeschV do not require BA approval (Section 3, No. 1 BeschVerfV or Section 8 BeschVerfV). Approval is not required for the remaining instances after two years of residence and employment subject to compulsory insurance or three years of continuous residence in the Federal Territory (Section 3b, Subs. 1 BeschVerfV).

Once the Law to Improve the Rights of Persons Eligible for International Protection und Foreign Employees takes effect, all family members will receive unrestricted access to the job market.

Measures for integrating highly qualified and qualified third-country nationals

The Federal Office for Migration and Refugees (BAMF) uses a three-stage model to exemplify the immigration process: “Pre-integration”, “Initial Orientation in Germany” and “Establishment in Germany”. In order to make Germany an attractive place to live and work for highly qualified and qualified third-country nationals, welcoming and recognition should be signalled, im-

29 www.stmwivt.bayern.de/mittelstand-handwerk/fachkraeftestrategie/study-and-stay-in-bavaria (08/04/2013).

30 www.research-in-germany.de (08/04/2013).

31 Australia, Israel, Japan, Canada, Republic of Korea, New Zealand, United States of America, Andorra, Honduras, Monaco and San Marino.

plemented and established in all stages (BAMF 2013b: 4; Schammann et al. 2012). Currently the German Federal Government, the German federal states and civil society players are working on, or are tangibly implementing the appropriate steps.³² Some of the existing measures are listed below.

The “Act to Improve the Establishment and Recognition of Foreign Professional Qualifications” (a.k.a. Recognition Act) took effect on 1 April 2012. With this, the German Federal Government created for the first time a general legal claim to review the equivalency of a foreign professional qualification with the German reference occupation.³³ This should make a sustainable contribution to securing the supply of skilled workers and integrating highly qualified and qualified third-country nationals (BAMF/EMN 2013). In addition, the German Federal Government has massively expanded the information and consultation offers for recognising foreign qualifications. The “Recognition in Germany”³⁴ online portal has been centrally providing information on recognition procedures and legal regulations in German and English since 1 April 2012 (BAMF/EMN 2013). Initial information in German and English is also offered by the hotline for recognition of foreign professional qualifications run by the BAMF on behalf of the BMBF.³⁵

Moreover, the initial orientation – and thus integration – of skilled workers should be made easier by the introduction of Welcome Centres. The BMAS is supporting these centres with start-up funding through the IQ network.³⁶ The centres are set up locally, for example, the Welcome Centre in Hamburg is located in the offices of the Chamber of Commerce (BMAS 2013a: 53).

1.3 Relations with Third Countries and Labour Migration Agreements

The German Federal Government’s policy on skilled workers focuses on persons from every country and is not geared toward specific states. Criteria for the management of immigration are alone the demand of the labour market and the qualification of the immigrants. Bilateral recruitment agreements therefore do not play a role in the immigration of skilled workers.

32 For action recommendations, cf. e.g. Abschlussbericht Runder Tisch “Aufnahmegesellschaft” (BAMF 2013b).

33 This legal claim only refers to the recognition of unregulated and federally regulated German reference occupations. Corresponding German State regulations on the recognition of reference occupations regulated at the level of the German States partially have already been enacted, or will be enacted soon.

34 Cf. www.anerkennung-in-deutschland.de/html/en/index.php (08/04/2013).

35 Cf. www.bamf.de/EN/Willkommen/ArbeitBeruf/Anerkennung/anerkennung-node.html (08/04/2013).

36 The BMAS created the nationwide “Integration through Qualification” (IQ) network in 2005 to improve the job market integration of adults with migration backgrounds (www.netzwerk-iq.de, 08/04/2013).

2 Success of Measures for Attracting Highly Qualified and Qualified Third-Country Nationals

2.1 Statistical Findings

There is no statistical source of information that records the attraction of skilled workers in a holistic way. However, the phenomenon can be roughly statistically identified by using various sources of information: The German Federal Institute for Population Research and the German Federal Statistical Office harmonised Microcensus data for the years 1996 to 2011 in a joint research project to also determine socio-structural features of immigrants, such as qualification level and job market integration (Ette et al. 2013). Since this data does not indicate the reason for immigration, the findings from the Microcensus data is supplemented by data from the Central Foreigners Registry (AZR) on issued residence titles, employment approvals by the BA and the results of written surveys by migrant workers in Germany conducted by the BAMF.

Microcensus

Data based on the Microcensus shows that the education level of new immigrants from third countries has increased noticeably. From 1996/97 to 2010/2011, the percentage of new immigrants with a high level of education (i.e. Level 5-6 of the International Standard Classification of Education – ISCED) increased by 20 percentage points to 41 %; the percentage of working-age Germans at this level increased by just under 3.8 percentage points to 28.4 %. The percentage of highly qualified persons is thus much greater in new immigrants than in Germans.

The vast majority of highly qualified new immigrants from third countries come from America and Asia (Ette et al. 2013: 7).

Table 1: Development of education selectivity in working age (18-64 years) new immigrants from third countries compared to the German population (1996-2011, two-year groups)

	1996/97	1998/99	2000/01	2002/03	2004/05	2006/07	2008/09	2010/11
New Immigrants: low level of education in %	34.5	40.4	35.6	33.9	29.5	28.6	22.5	22.0
New Immigrants: high level of education in %	21.0	24.2	24.1	25.9	28.0	30.0	37.9	41.0
Germans: low level of education in %	17.3	17.1	17.4	16.7	16.3	15.7	14.4	13.5
Germans: low level of education in %	21.0	21.5	21.9	22.0	22.8	22.0	23.6	24.8
New Immigrants Total	167,800	164,900	183,500	174,800	175,000	151,300	141,200	142,200

Source: Ette et al. (2013: 7)

The Microcensus data, however, does not indicate the reason highly qualified third-country nationals came to Germany. It can thus not be stated with certainty whether the individuals came to Germany for work or, e.g., family reunification, education or humanitarian reasons. The purpose of the move can be determined from the residence titles issued.

Residence permits issued to highly qualified persons (Section 19 German Residence Act) and researchers (Section 20 German Residence Act) (AZR data)

In reviewing the residence titles specially created for highly qualified third-country nationals³⁷ – i.e. Section 19 German Residence Act for highly qualified persons and Section 20 German Residence Act for researchers – it can be noted that the number of persons entering under these titles has increased similar to the Microcensus data. An exception are the residence titles according to Section 19 German Residence Act in the year 2012, as the number decreased from 370 persons in the preceding year to 244. Most likely, this

is the result of the introduction of the EU Blue Card on 1 August 2012 as well as of the deletion of the rule example, according to which a settlement permit under Section 19 German Residence Act could be issued, when a certain annual salary was met. Quantitatively, the residence titles issued according to Section 19 German Residence Act and Section 20 German Residence Act remain at comparatively low levels.³⁸ For example, in 2012, 244 highly qualified persons entered under Section 19 German Residence Act and 366 researchers under Section 20 German Residence Act.

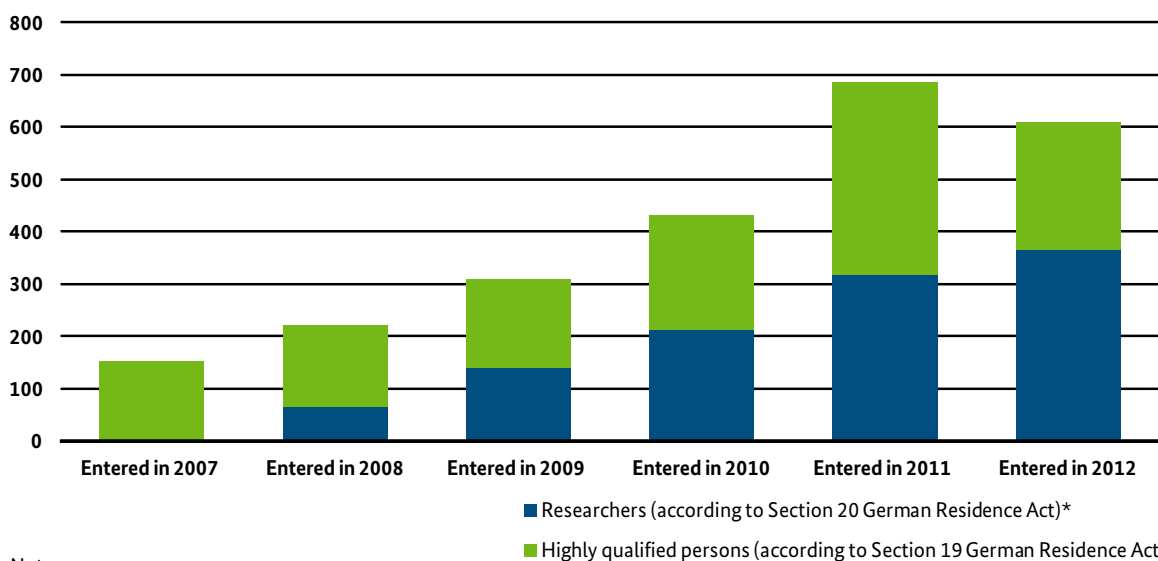
The gender distribution shows that the majority of these residence titles were issued to men, with small differences between the countries of origin (cf. Table 2 and Table 3); in total, around 84 % of highly qualified persons who entered in 2012 under Section 19 German Residence Act were male; for researchers under Section 20 German Residence Act, this was around 71 %.

The most common countries of origin are the United States of America, China, India, the Russian Federation, and Japan (cf. Table 2 and Table 3).

³⁷ The analysis in this section is limited to the residence titles according to Section 19 German Residence Act and Section 20 German Residence Act. The EU Blue Card (Section 19a German Residence Act), that was enacted on 1 August 2012, is addressed in a separate section.

³⁸ It has to be noted, that the residence title under Section 19 German Residence Act is permanent from the outset.

Figure 1: Immigrants issued a residence title under Section 19 German Residence Act (highly qualified persons) or Section 20 German Residence Act (researchers) (2007-2012)



Notes:

* Section 20 German Residence Act was introduced by the Directive Implementation Act enacted in August 2007.

Source: BMI/BAMF (2010, 2011, 2012, 2013); BAMF (2013a)

Table 2: Highly qualified immigrants issued a settlement permit under Section 19 German Residence Act by most common nationalities (2007-2012)

Staatsangehörigkeit	2007 entered in	2008 entered in	2009 entered in	2010 entered in	2011 entered in	2012 entered in		
						female immigrants	female immigrants in %	
United States	82	71	73	69	107	92	18	19.6
India	2	10	21	17	38	25	3	12.0
Russian Federation	7	13	6	15	50	23	4	17.4
Japan	9	4	13	5	19	17	0	0.0
Canada	13	7	10	16	14	7	3	42.9
Turkey	3	5	5	12	12	7	0	0.0
Other Nationalities	35	47	41	85	130	73	12	16.4
Total	151	157	169	219	370	244	40	16.4

Source: BMI/BAMF (2013); BAMF (2013a)

Table 3: Immigrant researchers issued a residence permit under Section 20 German Residence Act by most common nationalities (2008-2012)

Staatsangehörigkeit	2008 entered in	2009 entered in	2010 entered in	2011 entered in	2012 entered in		
					female immigrants	female immigrants in %	
China	11	17	28	53	67	13	19.4
India	7	12	24	45	43	13	30.2
United States	5	19	26	40	38	10	26.3
Japan	3	14	11	17	26	1	3.8
Russian Federation	7	10	12	21	22	5	22.7
Other Nationalities	31	68	110	141	170	63	37.1
Total	64	140	211	317	366	105	28.7

Source: BMI/BAMF (2010, 2011, 2012, 2013); BAMF (2013a)

However, limiting the analysis of highly qualified immigration to the residence titles issued under Section 19 and Section 20 German Residence Act underestimates the overall phenomenon, since the vast majority of highly qualified third-country nationals – i.e. according to the definition used in this study, persons with a (recognised) university degree – were issued, until the introduction of the EU Blue Card, with a residence permit under Section 18, Subs. 4 German Residence Act.

Issued residence titles under Section 18 German Residence Act (AZR data)

Investigating the number of residence titles issued under Section 18, Subs. 4 German Residence Act (qualified employment) sheds light on the immigration of quali-

fied third-country nationals as well as highly qualified third-country nationals. However, to analyse the latter, BA work approval data must be included, as was done in the next section.

In 2012, a total of 23,191 persons entered with a residence permit for qualified employment under Section 18, Subs. 4 German Residence Act. By far the most skilled workers came to Germany under this residence title compared to the other residence titles pertinent to the immigration of skilled workers.

Residence permits issued for qualified employment increased from 2009 to 2011, however less dynamically so than the increase in residence permits issued to highly qualified persons (under Section 19 German Residence Act) and researchers (under Section 20 Ger-

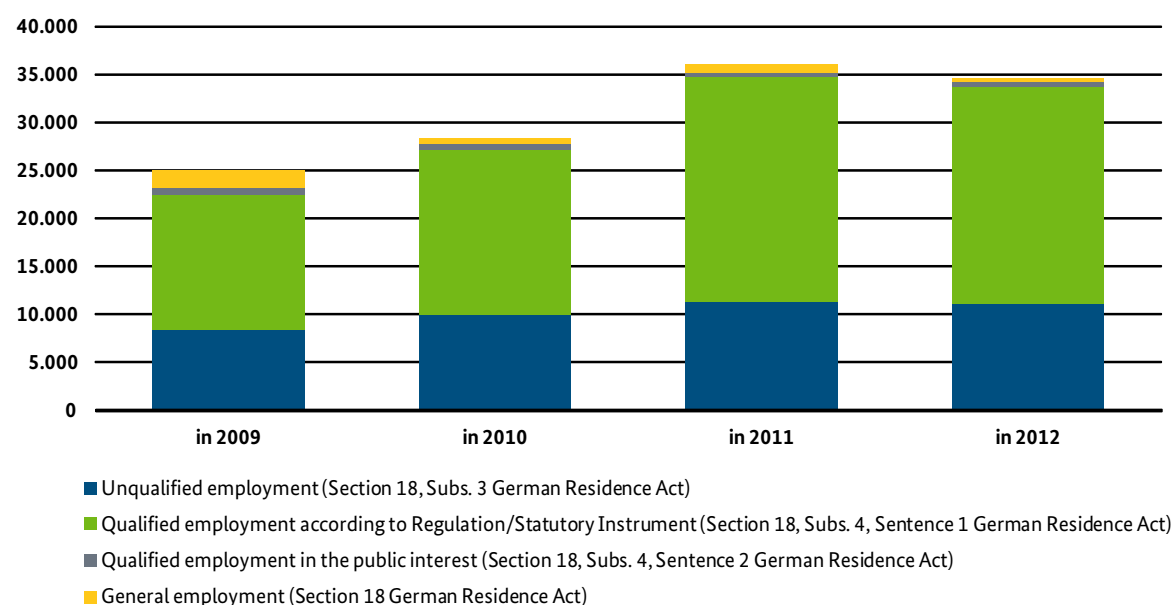
man Residence Act), which is nevertheless at a quantitatively very low level. In the year 2012 the number decreased slightly by 730 persons. Most likely, this is due, inter alia, to the introduction of the EU Blue Card on 1 August 2012.

The greatest percentage of residence permits for qualified employment was by far issued to men (2012:

more than 80 %). This percentage is on a similar order of magnitude to the residence titles issued for highly qualified persons (under Section 19 German Residence Act).

The primary countries of origin were in 2012 India, Croatia, China, Bosnia and Herzegovina, and the United States.

Figure 2: Foreigners entering for employment purposes under Section 18 German Residence Act (2009-2012)



Source: BMI/BAMF (2010, 2011, 2012, 2013); BAMF (2013a)

Table 4: Foreigners entering for employment under Section 18, Subs. 4, Sentence 1 German Residence Act by most common nationalities (2009-2012)

	2009		2010		2011		2012	
		in %		in %		in %		in %
India	2,515	18.0	3,165	18.5	4,481	19.2	4,067	17.9
Croatia	979	7.0	1,180	6.9	2,357	10.1	2,694	11.9
China	1,721	12.3	2,232	13.0	2,692	11.6	2,654	11.7
Bosnia and Herzegovina	856	6.1	827	4.8	1,762	7.6	2,188	9.6
United States	1,810	12.9	2,208	12.9	2,515	10.8	2,142	9.4
Japan	1,091	7.8	1,438	8.4	1,658	7.1	1,490	6.6
Serbia (incl. Former Serbia and Montenegro)	334	2.4	945	5.5	1,154	5.0	1,162	5.1
Turkey	788	5.6	698	4.1	887	3.8	1,156	5.1
Russian Federation	481	3.4	552	3.2	709	3.0	584	2.6
Ukraine	309	2.2	276	1.6	297	1.3	266	1.2
Other nationalities	3,121	22.3	3,621	21.1	4,776	20.5	3,099	13.7
Total	14,005	100.0	17,142	100.0	23,288	100.0	22,695	100.0

Source: BMI/BAMF (2011, 2012, 2013); BAMF (2013a); internal calculations

Residence titles issued to skilled workers (AZR data)

For a quantitative estimate of the overall phenomenon of the immigration of skilled workers before the introduction of the EU Blue Card, those individuals must be added who entered on a residence title for qualified employment (under Section 18, Subs. 4 German Residence Act), for highly qualified persons (under Section 19 German Residence Act), for researchers (under Section 20 German Residence Act), and for self-employment (Section 21 German Residence Act). This equals 25,946 skilled workers in 2011. Considering it cannot be determined if, above all, those who entered with a residence permit for self-employment (1,347 persons in 2011, 2012: 1,358) fall under the definition of highly qualified and qualified third-country nationals used in this study, this figure corresponds to information from the OECD, which tallies the migrant workers from third countries per year at around 25,000 (cf. OECD 2013: 19).³⁹ Because of the introduction of the residence title EU Blue Card, the figure increased in the year 2012 and now adds up to 27,349 persons; in 2012, 2,190 persons entered Germany to take up an employment under Section 19a German Residence Act – EU Blue Card – (BAMF 2013a).

BA approvals for residence titles for employment purposes

Data on BA employment approvals can be used for a breakdown of immigrated skilled workers according to the paragraphs of the BeschV in conjunction with which a residence permit under Section 18, Subs. 4 (cf. Table 5) is issued. Using the requirements for each occupation set forth in the BeschV, it can be determined whether or not the third-country nationals possibly fall into the category of highly qualified persons according to the definition used in this study – for example, persons who received a residence permit under Section 18, Subs. 4 German Residence Act in conjunction with Section 27, Subs. 1 BeschV (skilled workers with a recognised German university or comparable degree).

The most approvals in 2012 were issued for the employment of third-country nationals with a recognised university degree (Section 27, No. 1 BeschV until July 2012; Section 27, Subs. 1, Sentence 1 BeschV as of August 2012) as well as for employment as part of an international personnel exchange (under Section 31, No. 1 BeschV).

Estimates based on BA approval data show that a significant number of approvals for qualified employment under Section 18, Subs. 4 German Residence Act could be for highly qualified persons according to the definition used in this study, e.g., between approx. 53 % and approx. 87 % in 2012 (cf. Table 5). These findings complement the results of a survey performed by the BAMF on a representative sample of persons with a residence permit under Section 18 German Residence Act: Just under 87 % of respondents had indicated having completed a course of study (in Germany or abroad). However, it must be noted that these degrees are not necessarily comparable to German degrees (Heß 2012: 44-45).

According to further estimates, the number of BA approvals for employment requiring a highly qualified person has increased (from approx. 40 % in 2007 to approx. 53 % in 2012).

It must be noted that, in addition to the BA approvals for qualified employment (25,921 in 2012) cited here, there are additional highly qualified and qualified third-country nationals who received a residence permit under Section 18, Subs. 4, Sentence 1 German Residence Act for employment not requiring BA approval (Sections 2-15 BeschV). However, there are no figures for this, since they are not tracked by the BA.

39 While the OECD refers to migrant workers and not skilled workers, it can be assumed that skilled workers are meant, considering the pertinent paragraphs exclusively address the immigration of highly qualified and qualified persons.

Table 5: Approvals for third-country nationals according to the regulations in Subs. 2 BeschV (qualified employment) (2007-2012)

Highly qualified persons ***	Qualified persons ***	Exceptional Facts*	2007	2008	2009	2010	2011	2012
x	x	Section 26 Subs. 1 (temporary approval of language teachers)	251	285	290	225	191	165
	x	Section 26 Subs. 2 (temporary approval of chefs for specialities)	3,035	2,677	2,949	3,029	3,291	3,056
x		Section 27 No. 1 (skilled workers with a recognised foreign university degree)	2,205	2,710	2,418	3,336	6,536	5,073
x	x	Section 27 No. 2 (skilled ICT-workers), until July 2012	3,411	3,906	2,465	2,347	2,021	819
x		Section 27 No. 3 (university graduates adequate occupation), until July 2012	4,421	5,935	4,820	5,676	7,392	4,363
x	x	Section 27 No. 4 (graduates of German schools abroad), until July 2012			27	24	34	5
x		Section 27 Subs. 1 No. 3 (graduates of German schools abroad with university degree), in force as of August 2012						6
	x	Section 27 Subs. 1 No. 4 skilled workers after having completed a vocational training in Germany), in force as of August 2012						85
x		Section 27 Subs. 1 No. 1 (skilled workers with a recognised foreign university degree), in force as of August 2012						1,507
x	x	Section 27 Subs. 1 No. 2 (approval of qualified ICT-workers), in force as of 8/2012						270
x		Section 27 Subs. 2 (EU Blue Card in case the conditions of Section 41a Regulation on Authorising New Foreigners to Pursue Employment are fulfilled), in force as of August 2012						718
x		Section 28 No. 1 (executives in German enterprises)	1,626	2,189	2,150	2,060	2,177	2,146
x		Section 28 No. 2 (executives in Joint Ventures)	81	63	62	58	53	21
x	x	Section 29 (social work)	10	-	14	6	10	8
	x	Section 30 (care givers)	37	37	62	116	100	141
x	x	Section 31 No. 1 (international exchange of personnel)	5,419	5,655	4,429	5,932	7,076	7,233
x	x	Section 31 No. 2 (preparation for projects abroad)	403	246	163	211	433	305
		Approvals for qualified employment total	20,899	23,703	19,849	23,020	29,314	25,921
		Approvals für highly qualified persons (from approvals to qualified employment total)	8,333	10,897	9,450	11,130	16,158	13,834
		Approvals for highly qualified persons in % (from approvals to qualified employment total)	39.9	46.0	47.6	48.3	55.1	53.4
		Approvals that could also be for highly qualified persons (from approvals to qualified employment total)	17,827	20,989	16,838	19,875	25,923	22,639
		Approvals that could also be for highly qualified persons in % (from approvals to qualified employment total)	85.3	88.5	84.8	86.3	88.4	87.3
		Approvals according to Regulation on Authorising New Foreigners to Pursue Employment total	37,950	40,690	35,329	38,356	44,456	38,985
		Other approvals**	65,868	38,155	24,699	22,882	21,528	21,772
		Total approvals	103,818	78,845	60,028	61,238	65,984	60,757

Notes:

* The data does not include seasonal workers, showman's assistants, domestic helpers and contract workers.

** Includes approvals under the BeschVerfV, such as for persons whose deportation has been suspended or to continue an employment relationship; however, generally this does not refer to newly entered persons, rather to third-country nationals already living in Germany.

*** The individual paragraphs of the BeschV have been reviewed according to their provisions to determine whether or not the corresponding employment is likely to be performed by highly qualified and/or qualified third-country nationals (according to the definition used by this study). This is a purely study-related evaluation and not a generally applicable categorisation.

Source: BA (2013); BMI/BAMF (2013); internal calculations

Issued EU Blue Card residence titles

The number of EU Blue Cards issued in the period between the introduction of this residence title on 1 August 2012 to 31 December 2012 is taken from AZR data. In total, 2,399 EU Blue Cards were issued during this period for regular occupations and 1,619 for shortage occupations.⁴⁰ The percentage of women in the regular occupations is at around 20 % (22 % in shortage occupations) and thus at a similar order of magnitude to residence titles issued under Sections 18, Subs. 4 and 19 German Residence Act.

The large majority of persons who have received an EU Blue Card are between 25 and 34 years old (just below 75 %). Breaking down the data by nationality reveals that most of those with the EU Blue Card come from India (971), China (396), the Russian Federation (263), the United States (179), and the Ukraine (177).

It must be noted that the issuance of EU Blue Cards does not necessarily equate to an additional immigration of highly qualified third-country nationals. Rather it seems likely that, since 1 August 2012 – at least to a certain extent – the EU Blue Card is being issued in some instances instead of a residence permit for qualified employment (under Section 18, Subs. 4 German Residence Act). In addition, it can be assumed, that a number of EU Blue Card-holders have changed their status of residence. In the year 2012, for instance, 1,620 persons have changed from a residence permit according to Section 18, Subs. 4 German Residence Act to the residence title EU Blue Card. It can also be presumed that some EU Blue Cards are also issued instead of a settlement permit under Section 19 German Residence Act; however, the quantitative scope of this development will likely remain limited due to the relatively low number of settlement permits issued under Section 19 German Residence Act.

⁴⁰ The figures include late entries for the year 2012.

Table 6: Issued EU Blue Cards (August 2012 - December 2012)

		female immi- grants	female immi- grants in %
According to Section 19a, Residence Act in connection with Section 41a Subs. 1, Regulation on Authorising New Foreigners to Pursue Employment (EU Blue Card, regular occupations)	2,399	476	19.8
According to Section 19a, Residence Act in connection with Section 41a Subs. 2, Regulation on Authorising New Foreigners to Pursue Employment (EU Blue Card, shortage occupation)	1,619	355	21.9
Total	4,018	831	20.7

Source: AZR, as of 31/03/2013

Table 7: Issued EU Blue Cards by age group (August 2012 - December 2012)

	under 20 years		20 - 24 years		25 - 29 years		30 - 34 years		35 - 39 years		40 - 44 years	
		in %		in %		in %		in %		in %		in %
According to Section 19a, German Residence Act in conjunction with Section 41a Subs. 1 Regulation on Authorising New Foreigners to Pursue Employment (EU Blue Card, regular occupations)			68	2.8	805	33.6	893	37.2	366	15.3	144	6.0
According to Section 19a, German Residence Act in conjunction with Section 41a Subs. 2, Regulation on Authorising New Foreigners to Pursue Employment (EU Blue Card, shortage occupations)			87	5.4	796	49.2	501	30.9	153	9.5	50	3.1
Total			155	3.9	1,601	39.8	1,394	34.7	519	12.9	194	4.8

	45 - 49 years		50 - 54 years		55 - 59 years		60 - 64 years		65 years and older		Total	
		in %		in %		in %		in %		in %		in %
According to Section 19a, German Residence Act in conjunction with Section 41a Subs.1, Regulation on Authorising New Foreigners to Pursue Employment (EU Blue Card, regular occupations)	59	2.5	31	1.3	20	0.8	11	0.5	2	0.08	2,399	100.0
According to Section 19a, German Residence Act in conjunction with Section 41a Subs. 2, Regulation on Authorising New Foreigners to Pursue Employment (EU Blue Card, shortage occupations)	19	1.2	7	0.4	4	0.2	2	0.1			1,619	100.0
Total	78	1.9	38	0.9	24	0.6	13	0.3	2	0.05	4,018	100.0

Source: AZR, as of 31/03/2013

2.2 National Evaluation Methods

So far there is no comprehensive system in Germany for evaluating residence law provisions and practical measures for attracting skilled workers from third countries. This would require corresponding data. The OECD states that the current statistical infrastructure is insufficient for conducting a monitoring-process and would have to be improved (OECD 2013: 32).

Despite the lack of an integrated evaluation system, there are smaller review measures specialised for certain circumstances, or projects with ambitious focus, but these have not yet been completed and therefore cannot offer any authoritative results.

Of these, the first that should be mentioned is the progress report of the German Federal Government's skilled workers concept, which provides indicators for securing a base of skilled workers (BMAS 2013a). In regard to the immigration of skilled workers from third countries, the report is limited to the number of workers from third countries who are required to contribute to social insurance, but does not indicate whether these are new immigrants or persons who have been living in Germany.

Also relevant is the "How to conceptualize and measure immigration policies – the Immigration Policies in Comparison (IMPIC)" project of the Social Science Research Center Berlin (WZB) (WZB 2013). The research project is scheduled from 2010 to 2016 and seeks to analyse the effects and management capacity of individual policy measures. The topic of the research is the development of migration policy in 33 OECD states from 1980 to 2010. The base data is a comprehensive survey of legal specialists. The hypotheses will be tested using multivariate analyses while systematically including available data.

The German Federal Government has recognised the importance of evaluating immigration management and is gradually implementing corresponding measures. The BMWi, for example, is responsible for an impact analysis of the legal framework for foreign skilled workers as part of the German Federal Government's demographics strategy, and the BMBF is responsible for monitoring the Recognition Act, which is being conducted by the Federal Institute for Vocational Education and Training (BIBB).

2.3 Experiences of Decision-Makers

The continued opening of the German job market to skilled workers from third countries in recent years is generally considered positive (cf. OECD 2013, Steller 2013, Strunden/Schubert 2012). Residence law now offers skilled workers from third countries many opportunities to immigrate to Germany and take up employment that are complemented by a wide-ranging arsenal of practical measures.

However, a liberalisation of residence law is not necessarily reflected in the increased number of skilled workers coming from third countries (SVR 2012: 7; OECD 2013: 22-23). On the one hand, the opening in residence law that has progressed in smaller, single steps has only garnered strong notice abroad to a limited extent. On the other hand, the immigration of skilled workers is affected by push/pull factors beyond state-managed immigration policy, such as the economic and political situation in the country of origin as well as the language, culture and job market data in the host country (cf. Chapter 3).

3 Challenges and Obstacles to Attracting Highly Qualified and Qualified Third-Country Nationals

Factors – and thus challenges and obstacles as well – for attracting skilled workers from third countries can be basically divided into three groups: permanent characteristics that largely cannot be politically controlled (e.g. language, geographic location and economic size); economic, social and educational measures; and immigration rules and measures (SVR 2012: 7-8).

Uncontrollable or only partially controllable obstacles

German society is becoming increasingly pluralistic. However, immigration is not exclusively viewed positively in some parts of society, and a welcoming society and mutual recognition as a foundation of social cohesion (BAMF 2013b: 3) has only been established to a limited extent. To counteract this, consultation and information structures have been set up, administrative processes optimised, and programmes to promote tolerance of diversity executed in many places. However, it takes time for the rethinking in state immigration policy to lead to changes in public perception and for the attractiveness of Germany to skilled workers from third countries to sustainably grow through welcoming measures (OECD 2013: 23).

The German language can be an obstacle to the immigration of skilled workers, since many companies require a knowledge of German for a position; this is true above all for small- and medium-sized businesses (SMBs) (OECD 2013: 20, 23-24).

Economic, social and educational obstacles

The dual education system and the high number of regulated occupations can pose a problem for skilled workers interested in immigrating to Germany (OECD 2013: 171-174). Although much has been accomplished through, e.g., the Recognition Act, some companies still require formally obtained qualifications that do not exist abroad in the specific form available in Germany, or only exist to a limited degree and are thus poorly comparable.

The structure of the German university landscape can negatively impact researchers, such as the lack of tenure tracks commonly found at English-speaking universities (i.e. employment for life after a probationary period), a lack of support in many places for partners looking for work (dual career aspects) and lacking mid-level faculty at German universities.⁴¹

Immigration policy obstacles

The actual, yet above all the perceived complexity of German immigration law can thwart the immigration of skilled workers. On the one hand, the legal framework is perceived by companies in Germany (especially but not exclusively SMBs) as more complicated than it actually is. Company recruitment strategies

⁴¹ For a detailed explanation of the German education system, cf. Mayer et al. (2012).

have barely changed in the last few years, even in the course of the continued opening of the German job market – i.e. the options for employing skilled workers offered by residence law see a relatively low use (OECD 2013: 20).

On the other hand, even some skilled workers from third countries view the legal provisions as more confusing and the administrative act as more drawn-out than they actually are, which can negatively affect the decision to immigrate (OECD 2013: 21-22). This may also be due to the opening of the German job market to skilled workers from third countries coming in relatively small steps. An additional cause is the perception of required administrative steps that can lengthen the visa issuing process. Examples of this include the labour market test required for some occupations (cf. Chapter 1.2),⁴² the involvement of various offices in the visa issuing process – diplomatic mission, partially still Foreigners Authority and ZAV⁴³ – and the use of paper forms (OECD 2013: 21-22, 31-32; Hochrangige Konsensgruppe Fachkräftebedarf und Zuwanderung 2011; NKR 2011). Skilled workers primarily immigrate to large cities. Since the number of staff at the foreigners authorities have often not been adjusted accordingly or only to a certain extent, long waiting times can occur in some areas for the issuance of a residence title.

Although the applicable income thresholds for the immigration of highly qualified persons were markedly lowered when the EU Highly Qualified Directive was implemented (whereby now only a residence permit is issued instead of a permanent settlement permit), they are still considered too high by some since, e.g., they are not differentiated by the age of the immigrating third-country national (OECD 2013: 18, 27-28).

42 Even though the result of the labour market test is almost always positive (OECD 2013: 19).

43 The ZAV is only involved if BA approval is required.

4 Summary

Attracting highly qualified third-country nationals, i.e. persons with a (recognised) university degree, and qualified third-country nationals, i.e. persons with (recognised) professional training, is one of the courses of action identified by the German Federal Government to guarantee the supply of skilled workers in a sustainable way. This is manifested through, e.g., the continued opening of the German job market to skilled workers from third countries in recent years. Milestones include the Recognition Act that entered into force on 1 April 2012, the amendments to residence law that took effect on 1 August 2012 following the implementation of the EU Highly Qualified Directive, and the amended Employment Regulations that will take effect on 1 July 2013. Alongside a more active pursuit of skilled workers from third countries, the immigration numbers for this group have steadily risen in recent years. Even though the corresponding measures will have made their contribution, a direct causal relationship cannot be established due to the complexity of the phenomenon.

Measures for attracting highly qualified and qualified third-country nationals

Of the many measures introduced over the last few years to attract highly qualified and qualified third-country nationals, three particularly important residence measures should be highlighted:

The “Act to Improve the Determination and Recognition of Foreign Professional Qualifications” (a.k.a. Recognition Act) took effect on 1 April 2012, creating a general legal right to review the equivalence of foreign professional qualifications with regard to the German reference occupation.

Another important development is the implementation of the EU Highly Qualified Directive on 1 August 2012. This directive introduced additional easements for the immigration of skilled workers, such as gradu-

ates of German universities and the self-employed, as well as a residence permit for third-country nationals with a (recognised) university degree to seek employment.

Furthermore, the Employment Regulations are being fundamentally reformed and simplified. The new regulations will now allow third-country nationals with a (recognised) foreign university degree – a.k.a. qualified third-country nationals – to take up employment in Germany. The amended Employment Regulations will take effect on 1 July 2013.

In addition to the residence law provisions, there are a number of practical measures for attracting skilled workers from third countries. Newly created information portals, such as the BMWi’s “Make it in Germany” portal, inform potentially interested skilled workers on immigrating to Germany.

Statistical findings

The figures show an increasing trend in the immigration of highly qualified and qualified third-country nationals. However, a causal relationship between the measures for attracting these groups and the immigration figures cannot be established; the increase could also be due to factors beyond direct state management, such as the job market situation in Germany or push factors in the countries of origin.

What must be maintained is that the immigration of highly qualified persons is not limited to the residence titles (Sections 19 and 20 German Residence Act as well as Section 19a German Residence Act – EU Blue Card since 1 August 2012) specially created for this group, rather a considerable number of highly qualified persons are immigrating to Germany with a residence permit for qualified employment (Section 18, Subs. 4 German Residence Act) or change their residence status.

Challenges and obstacles

Although immigration has been made considerably easier for skilled workers and the German Federal Republic now has generous regulations compared to the other OECD countries, there remain some obstacles making the attraction of skilled workers from third countries difficult: In addition to factors that cannot or can only be somewhat controlled by policy, such as the German language or peculiarities in the German education system (highly regulated and somewhat very specific professional training qualifications that cannot be easily compared with foreign qualifications in the eyes of some companies), there are also challenges in regard to immigration policy.

In this regard, it must be emphasised that, according to a study by the OECD, the legal provisions continue to be perceived by many German companies and by skilled workers as very complex (OECD 2013: 20-24). This is already being counteracted with an active information policy as well as, e.g., some pilot projects. The incremental opening of the German job market to skilled workers from third countries resulted in the fact that reforms were not perceived abroad as strong signals. The EU Blue Card may be an exception, however many other EU Member States have introduced the EU Blue Card with comparable criteria; thus it has not given Germany any real competitive advantage per se, but at the most in light of the currently robust job market.

In the opinion of the OECD, immigration options can be expanded to include certain human capital criteria, a points system alone – for instance following the Canadian example – however, could not improve the attractiveness of a country (OECD 2013: 26-28). Although this does not have to mean the introduction of a points system as, e.g., in Canada, comprehensible, criteria-based immigration options could eventually send a strong signal abroad. The introduction of the six-month residence permit for third-country nationals with a (recognised) university degree to seek employment is already a step in this direction.

Desiderata and springboards for future research

A comprehensive evaluation of German immigration management could be an important instrument for shaping future policy with regard to employment op-

tions for highly qualified and qualified third-country nationals, however it is very complex. To do this, the existing statistical infrastructure must first be improved and expanded. According to the OECD, this could commence with the addition of some new data categories to the AZR, such as the individual exceptions in the BeschV and recording occupation and employer characteristics such as region and sector (OECD 2013: 32).

When the BA's employment statistics are released for the first time under the KldB 2010 categorisation (likely in the second half of 2013), allowing for evaluation by qualification level and nationality, this data source can then also contribute to the analysis. It could also be determined whether or not it would be possible to include the purpose and time of immigration as characteristics covered in the employment statistics.

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Abbreviations

AA	Federal Foreign Office
AVwV	General Administrative Regulations on the German Residence Act
AufenthG	Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory
AufenthV	Residence Regulations
AZR	Central Foreigners Registry
BA	Federal Employment Agency
BAMF	Federal Office for Migration and Refugees
BeschV	Regulation on Authorising New Foreigners to Pursue Employment
BeschVerfV	Employment Procedure Regulations
BIBB	Federal Institute for Vocational Education and Training
BMAS	Federal Ministry of Labour and Social Affairs
BMBF	Federal Ministry of Education and Research
BMWi	Federal Ministry of Economics and Technology
CIM	Centre for International Migration and Development
DAAD	German Academic Exchange Service
DFG	German Research Foundation
GIZ	German Agency for International Cooperation
ICT	Information and communications technology
ISCED	International Standard Classification of Education
ISCO-88	International Standard Classification of Occupations
KldB 2010	Classification of Occupations 2010
SMBs	Small- and medium-sized businesses
OECD	Organisation for Economic Co-operation and Development
WZB	Social Science Research Center Berlin
ZAV	Federal Employment Agency International Placement Services
ZuwandG	Act on Managing and Limiting Immigration and on Regulating the Residence and Integration of EU Citizens and Foreigners

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